IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 57 OF 2005

Pradeep Madhukar Poinguinkar,
S/o Madhukar Poinguinkar,
Major in age, married,
Businessman, r/o H.No.
Poinguinim, Canacona, Goa. ... Appellant

versus

1. Shri Manguesh Kuttalkar,
   Major in age,
   R/o H. No. not known,
   Rundamol, Davirlim
   Navelim, Salcete, Goa.

2. State of Goa,
   through its Public Prosecutor,
   Panaji, Goa. ... Respondents

Mr. Sudin M. S. Usgaonkar with Ms. G. Kale, Advocates for the Appellant.

Mr. M. Salkar, Advocate for the Respondent No.1.

CORAM : N. A. BRITTO, J.

DATE : 17TH AUGUST, 2006.

ORAL JUDGMENT

Heard Mr. Sudin M. S. Usgaonkar, the learned Counsel on behalf of the appellant/complainant and Mr. M.

Salkar, the learned Counsel on behalf of the respondent no.1/accused.

2. The short point involved in this case is as regards the service of statutory notice as required under Section 138(c) of the Negotiable Instruments Act, 1881.

3. As per the complainant, the said statutory notice was addressed to the accused with address which reads as follows:-

> "Shri Manguesh Kuttalkar,
> Major of age,
> Resident of H.No. not known
> Rundamol, Davorlim
> Navelim, Salcete, Goa".

4. There is no dispute that the above address is the correct address of the accused, as admitted by him. There is no dispute that the statutory notice sent by the complainant to the accused was returned with postal endorsement "insufficient address return to sender". The accused had also stepped in the witness box and had categorically stated that he had not received the said statutory notice. The learned trial Court

observed that in the case at hand, the postal envelope containing the demand notice was properly addressed, pre-paid and was posted by registered A.D. in a manner required under Section 27 of the General Clauses Act. The learned trial Court also observed that the material on record disclosed that after the order issuing process against the accused on 27-1-2001 dozens of summons/warrants were issued to the accused and even a proclamation was also ordered to be issued to the accused but the accused could be traced under warrant only after 2 1/2 years on 23-6-2003. In the course of the cross-examination of the accused, it was suggested on behalf of the complainant that all the time the accused was avoiding service of warrants and other processes by locking himself inside the house. The learned trial Court also took note of one endorsement on a warrant which endorsement read as follows:-

> "On several occasions efforts were made to arrest accused, in execution of warrant, but every time he avoided his arrest by hiding himself by locking door inside. Then made efforts and arrested warrantee and produced herewith alongwith warrant".

5. The learned trial Court came to the conclusion that the warrant was executed on the said address at Rumdamol, Davorlim, Salcete inspite of the fact that the person who had gone to execute the warrant and had made the said endorsement was not examined and the said endorsement was otherwise not clear as to the place from which the accused was arrested. It is quite probable that the accused was arrested from a place other than the address mentioned hereinabove. The learned trial Court also observed that the accused had managed to return the registered A.D. by the Postal Authorities and this the learned trial Court did without any evidence being led in that regard. On the other hand, the learned first appellate Court observed that the presumption available under Section 27 of the General Clauses Act was a rebuttable presumption. The learned first appellate Court noted that the postal article was not returned in the case at hand, by the Postal Authorities with the remark "refused" or "unclaimed" or "addressee absent at the given address" but that it was returned with the remark "insufficient address, return to sender". The learned first appellate Court noted that on the face of the said remark it only meant that the postman did not get a chance to see whether the addressee was

there or not to find out whether he was refusing or accepting the service. The learned first appellate Court also observed that the learned trial Court had made a serious allegation against the postmaster (sic. postman) and that the complainant in the complaint nor in his evidence had stated that the accused had managed to return the cheques(sic. postal article) by managing the Postal Authorities and therefore there was no presumption of any such management with the Postal Authority. The learned first appellate Court referred to Section 114 of the Evidence Act, and in my view rightly, to draw a presumption that official acts have been regularly performed. A postman is a public Officer. The postman had returned the postal article with the endorsement "insufficient address, return to sender". The said endorsement showed that the postman had not even made an attempt to serve the addressee/accused with the said postal article and on the contrary the accused had himself stepped into the witness box and categorically stated that he had not received the said article. In the light of the absence of necessary averments, the said endorsement and the categorical evidence given by the accused, it should not be said that the complainant had duly served the statutory notice upon the accused. Reliance

placed on the cases of **V. Satyanarayana** v. **A. P. Travel and Tourism Development Ltd. and another**((1997 3 Crimes 349) and **V. Raja Kumari** v. **P. Subbarama Naidu and another**(AIR 2005 SC 109) is of no assistance to the case of the complainant. The view held by the learned first appellate Court is a correct view of the matter in the facts and circumstances of the case. There was no question of presumption of service being drawn when the postman had himself returned the postal article for insufficient address. No interference is called for in this appeal. Hence, the same is hereby dismissed.

N. A. BRITTO, J.

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